

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10435 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PATEL MITESHKUMAR RATILAL

Versus

GUJARAT SECONDARY EDUCATION BOARD

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Appearance:

MR MUKESH R SHAH for Petitioner

MR MC BHATT for Respondent No. 1

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 07/07/97

ORAL JUDGEMENT

Rule. Mr MC Bhatt learned advocate waives service on behalf of respondent. At the request of the learned advocates, this petition is heard finally today.

The petitioner who is a student appeared in the Std. XII examination conducted by the respondent-Board in the month of october, 1995 for science stream, has by way of this petition has prayed for an appropriate writ,

order or directions quashing and setting aside the impugned order passed by the respondent-Board dated 9.12.96 Annexure-J whereby the entire result of the petitioner is cancelled and the petitioner was debarred from appearing in the higher secondary examination up to october, 1996.

The facts giving rise to the present petition are as under:

On 23.11.1995a show-cause notice was issued by the respondent against the petitioner alleging inter alia that the answer book of the petitioner there are lines made by the petitioner in the red colour and the petitioner was directed to remain present before the Examination Committee on 8.12.1995. The petitioner appeared before the committee on the said date and has submitted his explanation. On 15.12.1995 the petitioner received one telegram whereby the petitioner was directed to remain present again before the examination committee on 21.12.1995. The petitioner appeared before the Committee and at that time he was shown answer book of the petitioner in the subject of Mathematic Paper-I and the petitioner was told that the petitioner has committed the misconduct in the said subject and has changed the internal pages of main supplementary and on the main page of the answer book wherein by manipulating the total marks in the answer book from marks 3 to 53 marks. The petitioner served with the order by which the result of the petitioner of Std.XII of October, 1995 was cancelled and the petitioner was debarred from appearing in the Higher Secondary Examination up to October 1996. The petitioner has challenged the said order by filing a petition being Special Civil Application NO. 6122/96 in this Court and this Court ( Coram: M.S. Parikh, J.) on 27.9.1996 allowed the said petition by quashing the said order on the ground that the impugned penalty was imposed without issuing any notice and without following procedure. On 22.11.1996 the petitioner was served with the show-cause notice by the respondent to show-cause as to why the result of the petitioner should not be cancelled and the petitioner be not debarred from appearing in the examination and the petitioner was asked to appear before the Examination Committee on 2.12.1996 for personal hearing. The petitioner appeared on 2.12.1996 before the committee and demanded the documents on which the reliance is placed against him. On 9.12.1996 the respondent passed the impugned order which is under challenge by way of the present petition.

Mr MR Shah learned advocate for the petitioner

has contended that the impugned order passed against the petitioner is liable to be quashed and set aside on the ground that there is no evidence worth the name with the respondent that petitioner has manipulated the answer book of Mathematics Part-I. In support of his submission, he has placed reliance on decision of this court in the case of Patel Jagrutiben Kalabhai vs. G.S>E. Board, reported in 1991(2) GLR, 1250 and an unreported judgment delivered in Special Civil Applications Nos. 6348, 6382 and 6467 of 1995 of this Court (COram: NN Mathur, J.) dated 2.9.1996. After having gone through the said decisions, I feel that as far as the present case is concerned, the same should be decided on the facts of this case. I have perused the answer book of Mathematics Part-I and I find that there are serious manipulation in the answer book except the first and last page of the answer book, all the pages where the answers are stated are of different pages. In fact, these pages have been substituted. The answer book is stitched with threads. The answer book has left the holes of old stitchings and I find second stitch on the answer book. The first page of the answer book which contains the marks where also manipulation is made by increasing the marks from 3 to 53. The difference of number on the first page and the pages which are substituted have different numbers which would leave no manner of doubt that the pages are substituted. When I find illegality of manipulation as far as the Mathematics Paper-I is concerned which was in fact brought to the notice of the petitioner and subject minutes were also recorded which the petitioner, as can be seen from the affidavit in reply, has refused to sign, would definitely go to suggest that the petitioner is a party to the fraud. By raising technical contention that no notice has been given and that the petitioner will not be in a position to know as to who will be the examiner, are the questions besides the points, and is an attempt to side track the issue. In any case, as the petitioner has already undergone the period of punishment, no useful purpose will be served in allowing the petition at this stage. However, considering the facts that the petitioner is found guilty as far as Mathematics Part-I is concerned and, as there are no allegations as far as other papers are concerned, the respondent is directed to declare the result of the petitioner as far as the other papers except the paper of Mathematics Part-I of the examination of Std. XII held in October 1995.

In the result, the petition is accordingly partly allowed subject to the directions given above. Rule is

made absolute to the aforesaid extent only with no order  
as to costs.

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